

July 12th, 2007

Commission's Secretary

Marlene H. Dortch

Office of the Secretary

Federal Communications Commission

445 12<sup>th</sup> Street, SW

Room TW-A325

Washington, DC 20554

Re: WC Docket No. 06-210

CCB/CPD 96-20

**Motion to Prohibit AT&T from Addressing Tips IRS Issue**

**&**

**Motion to Compel AT&T to Produce Evidence**

Ms Shetler:

I, Joseph Kearney, make these comments voluntarily and without compensation to assist the Federal Communications Commission (FCC) in its consideration of the Declaratory Rulings' request of Petitioners in the above referenced proceeding.

AT&T again has notified the FCC that it will be further commenting. AT&T keeps filing comments but notice how AT&T never addresses the fact that it can not produce one single traffic transfer in which the transferor's revenue commitment and associated shortfall and termination obligations transfer to the transferee.

I have read the 1995 oral argument transcript before Judge Politan presented by petitioners in which multiple AT&T counsel asserted that AT&T has done thousands of traffic transfers. As an ex AT&T sales manager I can also attest that thousands of traffic transfers just from aggregators alone as of 1995 is accurate.

AT&T could have ended the case in its favor against the Inga petitioners with one single filing if the theory AT&T asserts (revenue commitments transfer on traffic only transfers) were actually a reality.

AT&T's method of argument when they know they are wrong is one of Deny, Delay, and Defend – which is recognized in the litigation community as AT&T's 3D tactic. That tactic is clearly in process in this case. What is it, 12 years now? It's a David vs. Goliath fight. The problem for AT&T is – David is right. So AT&T continually raises specious argument after specious argument and, I'm sorry to say, sucks Mr. Inga into them, thereby, supporting its Delay tactic. Justice delayed is justice denied and the FCC must stop AT&T's failure to provide evidence.

I am an ex-AT&T sales manager and I have made multiple comments stating that AT&T's current theory is sheer and utter nonsense and that is why AT&T can not produce any evidence. AT&T of course ignores my comments as it knows I am right.

If the Commission is forced to allow AT&T to file, due to the fact that this is a permit but disclose proceeding, I want AT&T to address: Why every other aggregator and direct AT&T customer was allowed to do a traffic transfer both before and after petitioner's traffic transfer and no revenue commitments were ever transferred?

I have looked at the AT&T TSA forms that were submitted to AT&T by PSE and no where does it state that PSE or CCI was advising AT&T to make any modifications as to what obligations normally transfer. Therefore if revenue commitments actually transferred on a traffic transfer, what was AT&T's justification for not transferring the traffic? AT&T was not being told "Don't transfer revenue commitments and shortfall and termination obligations."

AT&T made the first move. I have read the record and I see that it was correspondence initially sent by AT&T's counsel Fred Whitmer that warned Mr Inga that he better not think of bankrupting the plans due to AT&T's obvious concession that the plan commitments didn't transfer. AT&T reacted with its fraudulent use assertion because it understood how the tariff actually worked.

This case is an absolute lay-up and AT&T knows it and that is why AT&T now files its sanctions creation, because AT&T knows the FCC staff doesn't believe a word of AT&T's new interpretation of 2.1.8.

I understand the Commission must allow AT&T to file more of its rhetoric due to the permit but disclose nature of these proceedings, but how long is the Commission going to allow AT&T to delay, as AT&T avoids the central question of: Where is AT&T's evidence to support its theory?

Is the Commission going to keep letting AT&T file so it can continue delaying justice for petitioners? Mark my words. AT&T will file but there will be no evidence supplied. Just more accusations, presumptions, and rhetoric like a further update of AT&T's count of the amount of times the Inga petitioners correctly stated AT&T's defense was "bogus".

If AT&T was actually concerned over costs, I seriously doubt that AT&T counsel at \$500 an hour would sit there and count how many times it was correctly caught making a bogus statement.

Given the fact that

- 1) Tips is not even a party to the petitioners declaratory ruling requests
- 2) the evidence presented by Tips shows that the IRS documentation was addressed to Tips and not petitioners

the Commission should order that AT&T's response should not cover any of the Tips IRS issue.

The FCC should also compel AT&T to produce evidence of traffic transfers in which revenue commitments transferred to transferee. The Commission has allowed the AT&T charade to go on far too long.

Respectfully submitted,

*Joseph J Kearney*

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